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In the Supreme Court

of the United States

OCTOBER TERM, 1975

No. 75-698

LAKE OSWEGO SCHOOL DISTRICT NO. 7, DR. THOMAS COTTLE, EDWARD ALLEN, SAMUEL H. MELROSE, JR., GARRY R. BULLARD, and JAMES S. PUTNAM, in their capacities as members of the LAKE OSWEGO SCHOOL DISTRICT BOARD,

Petitioners,

v.

BARBARA R. HUTCHISON,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CAROL A. HEWITT
c/o American Civil Liberties Union
1331 S. W. Broadway
Portland, Oregon 97201
Attorney for Respondent

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 12-75

BLEED THROUGH

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ARGUMENT
REASONS FOR DENYING THE WRIT

I.

This question has been decided against petitioners' position by every federal appellate court considering it.

Those Circuits which have considered the question

presented have uniformly decided the question against petitioners' position.[1]

The uniform decisions by federal appellate courts on the issue raised by petitioners here refute petitioners' claim that there is "uncertainty" in the private and public sector whether under a sick leave or disability benefit plan a private or public employer discriminates by distinguishing between absences due to normal pregnancy and those attributable to disabilities unrelated to normal pregnancy.

This uniformity of decision by federal appellate courts renders review by this Court inappropriate.

II.

Decision below does not conflict with this Court's decision in Geduldig v. Aiello.

The Ninth Circuit in its decision below correctly distinguished *Geduldig* v. *Aiello*, 417 U.S. 484 (1974), on the basis that the instant case involves statutory interpretation rather than constitutional analysis. In *Geduldig* the Court considered whether a classification based upon pregnancy violated the Equal Pro-

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[1] *American Telephone & Telegraph Co.* v. *Communications Workers of America*, 513 F.2d 1024 (2d Cir. 1975), *petition for cert. filed*, 43 U.S.L.W. 3684 (U.S., June 19, 1975) (No. 75-1601); *Farkas* v. *South Western City School District*, 8 F.E.P. Cases 288 (S.D. Ohio 1974), *aff'd.* by Sixth Circuit Court of Appeals on October 24, 1974, (No. 74-1649); *General Electric Co.* v. *Gilbert* and *Gilbert* v. *General Electric Co.*, 44 U.S.L.W. 2013 (4th Cir. 1975), *cert. granted*, October 6, 1975 (U.S. Nos. 74-1589, 74-1590); *Liberty Mutual Ins. Co.* v. *Wetzel*, 511 F.2d 199 (3d Cir. 1975), *cert. granted* May 27, 1975 (U.S. No. 74-1245, 43 U.S.L.W. 3621).

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tection Clause of the Fourteenth Amendment. Title VII was not at issue.

The broad language of Title VII, unlike the Equal Protection Clause, proscribes classifications which "in any way would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect [her] status. . . ." 42 U.S.C. § 2000e-2(a)(2). As the Ninth Circuit correctly pointed out in the decision below, the language of Title VII is conducive to an interpretation different from that given the Equal Protection Clause.

Because the Ninth Circuit decision in this case does not conflict with the Court's opinion in *Geduldig*, certiorari should be denied.

III.

Cases raising identical issues are pending before this Court.

As the petitioners correctly point out, this case arises in the same context and presents the same basic issues as *Liberty Mutual Ins. Co.* v. *Wetzel*[2] and *General Electric Co.* v. *Gilbert* and *Gilbert* v. *General Electric Co.*[3] Although the question presented is one of fundamental importance in the administration of Title VII, the Court has previously granted certiorari in *Liberty Mutual* and *General Electric*. Therefore, certiorari should be denied or consideration of the

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[2] 511 F.2d 199 (3d Cir. 1975), *cert. granted* May 27, 1975 (U.S. No. 74-1245), 43 U.S.L.W. 3621.

[3] 44 U.S.L.W. 2013 (4th Cir. 1975), *cert. granted* October 6, 1975 (U.S. Nos. 74-1589 and 74-1590).

Petition should be deferred until a decision is reached by the Court in the pending cases.

Additional argument on the question presented is unnecessary and would unduly burden this Court. For this reason, certiorari should be denied.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

CAROL A. HEWITT
c/o American Civil Liberties
Union of Oregon
1331 S. W. Broadway
Portland, Oregon 97201
Attorney for Respondent

BLEED THROUGH